IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY SIXTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 19265 of 2004

Between:

Anjum Yaseen D/o Late Mohammed yaseen
R/o H. No. 19-5-482/A/50, Najamnagar, Krishnabagh, Hyderabad

..... PETITIONER

AND

1. The Commissioner of Police, Hyderabad.
2. The Deputy Commissioner of Police, South Zone, Hyderabad
3. The Station House Officer, Bahadurpura, Bhadurpura Police Station Hyderabad
4. Durdanga Begum W/o late Mohd Yaseen
R/o H. NO. 19-2-18/B/40, Baghe Amjad Daula, Kalepathar, Hyderabad

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ order or direction, more particularly one in the nature of Writ of Mandamaus directing the respondents 1 and 2 to take cognizance of the offence and to take the finger prints, conduct panchnama and restore the possession of the petitioner otherwise the petitioner will suffer irreparable loss and injury which cannot be compensated by any means.

Counsel for the Petitioner : PARTY-IN-PERSON

Counsel for the Respondents 1 to 3: GP FOR HOME

The Court made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.19265 OF 2004

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ORAL ORDER :

The petitioner herein, who is a practising advocate filed a complaint before the II-Metropolitan Magistrate, Hyderabad on 02-09-2004 making certain allegations against the fourth respondent herein and eight others and seeking to take action against them for the offences punishable under Sections 115, 388, 406, 420, 500 & 506 read with Section 120-B of the Indian Penal Code. The allegation appears to be that the fourth respondent herein who is named as the first accused in the complaint took Rs.50,000/- from the petitioner offering to establish an office, equipped with Computer, etc., at premises bearing No.19-5-122 Nandi Muslai Guda, Hyderabad. It was also alleged that the fourth respondent has been making clandestine efforts to dispose of the property. In pursuance of the same, the sworn statement of the petitioner was recorded in part by the learned Magistrate on 24-09-2004. It is alleged

that in the meanwhile the fourth respondent herein i.e, the first accused in Crime No.195/2004, during the absence of the petitioner, opened the shutter of the petitioner's office in which a computer is installed apart from the valuable documents and cash of Rs.25,000/- were kept, and locked the office and retained the keys with her. In the circumstances, the petitioner was constrained to file another complaint before the II-Metropolitan Magistrate, Hyderbad on 28-09-2004 and the same was referred to the 3rd respondent – Station House Officer, Bahadurpura P.S., Hyderabad. In pursuance thereof, the third respondent recorded the statements of the witnesses and registered Crime No.195 of 2004 for the offences under Sections 379 & 450 read with 34 of the Indian Penal Code on 07-10-2004. However, the grievance of the petitioner is that the Police have not taken the finger prints at the scene of offence nor made any panchnama by visiting the place of offence and they have not arrested the accused persons in spite of the endorsement made by the 2nd respondent - Deputy Commissioner of Police, South Zone, Hyderabad directing the Assistant Commissioner of Police to look into the matter immediately. It is alleged that the Police is collecting evidence from the accused-persons in order to dilute the case, but they have not taken the finger prints nor conducted Panchnama. It is also pleaded that since the fourth respondent has taken the possession of the petitioner's office and is not allowing the petitioner to open the office, she is unable to carry on her professional works and is put to irreparable loss and injury. Hence, this writ petition contending that the action of the respondents is arbitrary and illegal and in violation of Articles 19(1)(g) and 21 of the Constitution of India and therefore seeking a direction to the respondents 1 to 3 to take cognizance of the offence and to take the finger prints, conduct panchnama and restore possession of the premises to the petitioner.

Keeping in view the specific plea of the petitioner that the respondents failed to consider even her representation dated 08-10-2004, while directing notice to the respondents, this Court by order dated 27-10-2004 directed the second respondent – Deputy Commissioner of Police, South Zone, Hyderabad to consider the representation made by the petitioner dated 8-10-2004 and to take the necessary steps in accordance with law.

On behalf of the respondents 1 to 3, the Inspector of Police, Bahadurpura P.S. filed a counter-affidavit stating that during the course of the investigation in Crime No.195 of 2004, dated 7-10-2004 he issued notice to the petitioner/complainant under Section 91/160 of the Code of Criminal Procedure and he deputed PCs 3371, 4259 to serve the said notice on the petitioner. However, the Constables reported that though they could trace the address of the petitioner the door was found to be locked. Thereafter, in pursuance of the interim directions issued by this Court, the representation of the petitioner dated 8-10-2004 requesting to instruct the investigating officer to take the necessary steps by arresting the accused No.2 in Cr.No.195 of 2004, the investigating officer visited the scene of offence situated at premises No.19-5-122, Nandi Muslai Guda, Kishanbagh, Hyderabad and summoned two Panchas namely Sri T.Ravinder and Sri Mohd. Nazeer Ali who are residents of Nandi Muslai Guda, Htyderabad and conducted panchnama and taken photographs of the scene with the help of photographer in the presence of panchas. It is further stated that the investigation officer examined two witnesses viz., Mohd. Jahangir and Mohd. Habeeb and recorded their detailed statements, but they stated that they have no idea about the theft that was said to have occurred in the said premises as the shutter was locked. They further stated that they are the tenants of the said premises and further stated that the premises belong to Khaja Mohammed Omer Kusro who is staying abroad. The investigating officer has also examined the complainant / petitioner and recorded her statement who corroborated the facts in the FIR, but failed to produce any document nor give any satisfactory answer about the cash alleged to have been stolen by the alleged accused who are none other than her mother, sister and brother-in-law. It is also stated that the investigation is under progress and it is likely to be completed shortly and thereafter the final report will be filed before the Court. It is further stated that the second respondent conducted Panchnama in the presence of the witnesses and recorded their statements.

I have heard the petitioner who appeared in person and the learned Government Pleader for Home appearing for the respondents 1 to 3 and perused the material on record.

It is not in dispute that on a reference made by the learned II-Metropolitan Magistrate, Hyderabad, the third respondent has registered the crime and the investigation is still pending. Though the petitioner alleges that the investigating

officers are not conducting the investigation properly and the panchnama was not conducted and the appropriate witnesses were not examined, it is clear from the counter-affidavit that, in compliance with the interim orders of this Court dated 27-10-2004, the scene of offence has been visited and the panchnama has already been conducted. Hence, no further adjudication is necessary in the writ petition.

It is to be noted that the third respondent in the counter-affidavit has also categorically stated that the investigation is likely to be concluded shortly and the charge-sheet will be filed before the learned Magistrate. Once the final report / charge-sheet is filed before the learned Magistrate, it is always open to the petitioner/complainant to file her objections, if any. It is neither proper nor possible for this Court to express any opinion as to the correctness of the allegations made by the petitioner at this stage while the investigation is still pending.

In the circumstances, without expressing any opinion with regard to the correctness of the allegations made by the petitioner, and granting leave and liberty to her to raise the objections, if any, as to the alleged lapses in the investigation, at appropriate stage before the learned Magistrate before whom the proceedings are pending, the Writ Petition is disposed of with a direction to the respondents 1 to 3 to complete the investigation in Crime No.195/2004 and to take the necessary further steps expeditiously following due process of law.

The Writ Petition is accordingly disposed of. No costs.

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26th November, 2004.

Note:- CC in 3 days.

(B/O)

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To

1.The Commissioner of Police, Hyderabad.

2.The Deputy Commissioner of Police, South Zone, Hyderabad

3.The Station House Officer, Bahadurpura, Bhadurpura Police Station Hyderabad

4. 2CCs to G.P. for Home, High Court of AP Bldgs, Hyderabad (OUT).

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